

March 11, 2014

2013-501

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

This letter report presents the results of a follow-up review of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (board) subsequent to recommendations made in 2009 by the California State Auditor (state auditor). In November 2009 the state auditor submitted a report to the governor and legislative leaders titled *Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun: It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies With Legal Requirements*, Report 2009-043. The report included recommendations that the board cease reimbursing pilots for business-class travel when they fly for training held in France and amend its contract with the San Francisco Bar Pilots (Bar Pilots) accordingly, and that it fully comply with state law regarding investigations. The report also recommended that when licensing pilots, the board consistently adhere to requirements in state law by completing checklists to ensure that trainees and pilots have fulfilled all licensure requirements before the board issues or renews a license. As the Table on page 2 shows, this follow-up review found that the board has not fully implemented some recommendations that will help it ensure that it complies with legal requirements, including those related to licensing pilots; investigating navigational incidents, misconduct, or other matters involving pilots (incidents); and ensuring that its expenditures are appropriate.

Background

Pilotage in the San Francisco, San Pablo, and Suisun bays has been regulated by the board—a single-purpose state board—continuously since 1850. In 2001 the Legislature added Monterey Bay to the regulated area. The board's mission is to license and regulate up to 60 pilots who guide certain vessels in these bays. State law requires the board to establish the number of pilots needed based on current economic trends and other factors, and to license pilots serving these bays. Additionally, the board is required to adopt training standards and programs for pilots and pilot trainees, and to, among other responsibilities, establish an incident review committee to investigate incidents involving pilots. The board receives its funding through surcharges added to the bill for a pilot's services. This revenue pays for the board's operations, including its executive director and three other staff members, and for pilot training.

The board consists of eight members representing pilots, the shipping industry, the public, and the secretary of the California State Transportation Agency, who is a nonvoting member. The board accomplishes much of its work through advisory committees that may include nonboard members. These committees provide advice and guidance to the board; however, the board has ultimate authority to decide matters that come before it.

Table

Status of Actions Taken in Response to Selected Recommendations in the California State Auditor's Report 2009-043

RECOMMENDATION	STATUS
To ensure that it consistently adheres to requirements in state law when licensing pilots, the board should:	
• Follow its recently established procedure to complete a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure, including the physical examination, before the board issues or renews a license.	Partially Implemented
• Establish and implement a procedure for approving and monitoring board-appointed physicians.	Pending
• Review and update its regulations regarding the frequency of pilot physical examinations to ensure they are consistent with state law.	Fully Implemented
To ensure that it fully complies with state law regarding investigations, the board should:	
• Implement procedures to track the progress of investigations, including a procedure to identify those investigations that may exceed the 90-day deadline established in law.	Partially Implemented
• Ensure that there is proper justification and approval for investigations that require more than 90 days to complete.	Partially Implemented
To ensure that all pilots complete required training within the specified time frames, the board should:	
• Schedule pilots for training within the period specified in state law and board regulations.	Fully Implemented
• Include in its contracts with institutions providing continuing education for pilots, a provision requiring those institutions to prepare an evaluation of pilots' performance in the training.	Fully Implemented
To adhere to requirements regarding administrative practices, the board should formalize a procedure for evaluating the executive director's performance on an annual basis.	Fully Implemented
To ensure that it strengthens internal policies and controls over pilot rates and its finances, the board should:	
• Review and approve any quarterly changes made to that portion of the pilot fee based on the mill rate.*	Fully Implemented
• Establish a requirement for an independent audit of the pilot boat and pilot pension surcharges and ensure that such audits are conducted each year.	Fully Implemented
To ensure that its expenditures are appropriate, the board should:	
• Competitively bid contracts with physicians who perform physical examinations of pilots.	Pending
• Cease reimbursing pilots for business-class travel when they fly for training and amend its contract with the San Francisco Bar Pilots accordingly.	Fully Implemented

Sources: Selected recommendations made in the report by the California State Auditor (state auditor) titled *Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun: It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies With Legal Requirements*, Report 2009-043 (November 2009) and the state auditor's analysis of the board's actions related to the recommendations.

* The mill rate is based on an amount equal to a fraction of a dollar per high gross or registered ton of the vessels.

The Board Continues to Lack Sufficient Controls Over Certain Travel Reimbursements

In our November 2009 report, we recommended that the board cease reimbursing pilots for business-class travel when they fly for training and amend its contract with the Bar Pilots—an affiliated group of individuals licensed by the board—accordingly. As part of the requirement for licensure, board regulations require pilots to attend a manned scale-model shiphandling course once every five years. To help pilots meet this requirement, the board contracts with Artelia Eau & Environnement in France to provide training two times annually or three times on an exception basis, typically during the summer. Although the board amended its contract with the Bar Pilots to require that they book travel for the most economical refundable fare, we question whether the Bar Pilots are doing so. Further, the board could do more to ensure that the Bar Pilots are complying with the terms of their contract.

According to state regulations, reimbursement for transportation expenses is to be based on the method of transportation that is in the best interest of the State, considering both direct expense and the employee's time. Although this regulation applies specifically to state employees, the board uses state funds to pay for the pilots' required continuing education—including reimbursement for travel expenses—and therefore has a responsibility to ensure that it uses these funds in the most prudent manner possible. However, in reviewing airline ticket information for pilots' travel to France, we identified concerns that the Bar Pilots may not be booking the most economical fares.

The board reimbursed the Bar Pilots for airline fares for pilots' travel during fiscal years 2011–12 and 2012–13 ranging between roughly \$4,600 and nearly \$5,100 per round-trip ticket for each of the 29 pilots. Based on travel documentation submitted to the board by the Bar Pilots and our review of the respective airlines' Web sites, these appear to be economy-class tickets with fully refundable fares. However, using similar airlines, routes, and travel dates in June 2014—consistent with the time of year pilots most often attend this training—we determined that purchasing economy-class tickets with fares that are refundable for a small fee could reduce overall costs by roughly half, on average.

Specifically, over the two fiscal years we reviewed, the board reimbursed the Bar Pilots approximately \$141,000 for what appear to be economy-class tickets with fully refundable fares, compared to our estimate of nearly \$70,000—an amount based on the average of three airlines' airfares for economy-class tickets refundable for a small fee. This represents a potential savings of roughly \$71,000 over just a two-year period. In the event that a trip must be cancelled altogether, there could be a cancellation fee ranging from \$300 to \$350 per ticket, depending on the airline; however, the fact that this is a required training limits the risk that a trip would be canceled. Further, one of the three airlines we reviewed indicated that it may waive this fee if the flight is rescheduled. Thus, we believe the savings to the State outweigh the limited risk that an airline ticket would be cancelled.

In reviewing travel reimbursement invoices, the board does not require the Bar Pilots to submit sufficient documentation to ensure that the costs are reasonable and that it reimburses only methods of travel that are in the best interest of the State. Although the Bar Pilots submit documentation that indicates pilots flew in economy class, the board does not require the Bar Pilots to demonstrate that they booked the most economical refundable fare, and it does not take independent steps to ensure that the Bar Pilots comply with this portion of the contract. The board's executive director indicated that he did not believe such a practice was necessary or the most valuable use of the board's staffing resources. However, if the board had required the Bar Pilots to submit such documentation and had reviewed the rates to ensure that they were reasonable, it would have realized that the costs were not the most economical. Further, by not booking the most economical refundable fares, the Bar Pilots are not in compliance with their contract.

Additionally, the board lacks an adequate process for reviewing travel reimbursement invoices submitted by the Bar Pilots. In one instance, the Bar Pilots submitted duplicate invoices for ground transportation to and from San Francisco International Airport for four pilots. The board paid both of these invoices, totaling nearly \$375. According to the executive director, the board does not have a reason to suspect the Bar Pilots purposefully submit invoices for unnecessarily high or duplicate travel expenses. He further indicated that while board staff review travel expenses to ensure the costs are allowable, it does not require the Bar Pilots to submit original receipts, and it does not always specifically review the Bar Pilots' receipts to prevent multiple reimbursements. If the board required original receipts, the Bar Pilots would not be able to submit duplicate invoices.

Further, the board paid additional costs for airfare to accommodate pilots traveling outside of the dates of the required training in France, which could constitute a gift of public funds. According to state law, state agencies cannot use state funds to pay for expenses used for personal purposes. However, we found that over the two-year period we reviewed, the board paid an additional cost to extend pilots' travel dates several times for a total of \$100 in extra costs. For example, in one instance, a pilot flew to France nine days before the start of training. The airfare for this pilot cost the board \$42 more than the airfare for pilots flying on the Friday before the course which, based on our review of travel invoices, appears to be the standard travel day for pilots attending training in France. When we questioned these extra costs, the executive director asserted that staff reviewed the invoices for such overages, and he attributed any extra payments to staff error. We noted that the board does not have a process that covers reimbursements for travel costs. Without an adequate policy for reviewing travel reimbursement invoices submitted by the Bar Pilots, the board risks continuing to incur inappropriate costs, which may constitute a gift of public funds.

The Board Is Still Not Fully Complying With State Law Regarding Investigations

In our November 2009 report, we found that the incident review committee (committee) did not consistently complete investigations within 90 days of the incident date and did not always receive board-approved extensions as required by state law. Further, because state law requires the committee—composed of the board's executive director and one of the three public members of the board—to present its completed investigation to the board within 90 days, we expected that in cases requiring an extension, the board would have asked the committee to report the reason it was requesting an extension and would include the reason in its public meeting minutes.

Although the board has developed a process for conducting, tracking, and reporting the progress of investigations, the committee still is not completing these investigations in a timely manner, and the board is not following its process for granting extensions to the 90-day deadline. In our review of the 23 investigations initiated during fiscal years 2010–11 through 2012–13, 18 required extensions. Of those 18 investigations, we noted that for three of them, the committee did not request—and the board did not approve—the required extension within 90 days of the incident. Further, we noted that for the 15 investigations for which the committee requested extensions and the board approved them within the required 90 days, the meeting minutes did not always include a sufficient justification of the reason for the extension. In fact, for four investigations, the board's meeting minutes did not reflect any reason or justification at all for the extension. For an additional two, the board minutes simply reflected that the incidents remained under investigation, without any further explanation for the delay.

According to the board's executive director, although the committee provides the reason for an extension in the form of an oral report at a board meeting, the reason does not always become a topic of discussion. He further explained that if the board discusses the reason for the extension request, board staff maintaining the meeting minutes normally cite the reason but not the specifics of the discussion, unless it results in an action by the board, such as a denial of the extension request. However, we question this explanation. We believe it would be prudent for the board to require the committee to submit written justification for extension requests in advance of the meeting, and without this written justification the board should not consider granting the extension. Without documented and sufficient justification for extension

requests, the board cannot assess the cause of the delays and determine how to mitigate such delays in the future. Furthermore, documenting sufficient justification for extension requests in the public board minutes allows interested members of the public, not present at the board meetings, to be fully informed.

Finally, the board is not closing the majority of investigations in a timely manner. As mentioned previously, the board approved extension requests for 18 of the 23 investigations initiated during our review period. For five of these investigations, the committee requested a one-time extension. In four of these five cases, the committee requested, and the board approved, an extension prior to the 90-day deadline. In each of these instances the board closed the investigation within one month after the required 90 days. However, for the fifth investigation, the committee requested an extension after the 90-day deadline, which the board approved. The board ultimately closed this investigation 50 days after the original 90-day deadline.

For each of the remaining 13 investigations, the committee requested multiple extensions, which the board approved. The board took between 31 and 192 days after the 90-day deadline to close the 13 investigations. The executive director explained that various reasons can account for delays in closing investigations, including obtaining witness statements and other evidence. According to the executive director, of the 23 incidents investigated over the three-year period examined, it is noteworthy that 11 of them were initiated in a single 12-month period, placing a considerable strain on the resources of the committee and board staff. Nevertheless, the board has a responsibility to close these cases timely. Although state law permits the board to approve extensions beyond the 90-day deadline, by repeatedly granting the committee's extension requests, the board gives the appearance that it may not be ensuring the best possible protection against incidents that could harm pilots and crews, the shipping industry, or the environment, as pilots are generally allowed to pilot while under investigation.

The Board Does Not Have an Adequate Process for Ensuring That Pilots Meet All Requirements for Licensure

In our November 2009 report, we recommended that before it issues or renews a license, the board ensures that it consistently adheres to requirements in state law when licensing pilots by completing a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure. Additionally, we recommended that the board include in its contracts with institutions providing continuing education for pilots a provision requiring those institutions to prepare a written evaluation of pilots' performance in the training. State law and board regulations require applicants for licensure to meet several conditions before the board can issue the trainee or pilot a new or renewal license. Some of the conditions that applicants must meet for licensure include satisfactory completion of training requirements and physical examinations.

Although board staff use a checklist for processing license-renewal applications, we question the checklist's usefulness because it is incomplete. In our review of six license renewals for active pilots, we found that board staff used the renewal checklist in every case. However, the renewal checklist does not include all of the requirements for licensure as outlined in state law and the board's regulations. Specifically, the license-renewal checklist does not require documentation demonstrating that pilots have piloted vessels in the past year. If a pilot has not

piloted a vessel at least once each year, the applicant must meet, and submit documentation of, one of the following criteria: the applicant must have been found medically disabled, the applicant must be serving as port agent, or the applicant must have been granted a leave of absence without pay by the board during that period.

The executive director stated that it would not be possible, without board staff knowing, for a pilot not to pilot a vessel for a full year. Further, he indicated that it would be such a high-profile and rare occurrence that the board has not found it necessary to add the requirement to the renewal checklist. Nevertheless, by not including all of the requirements for license renewal in its checklist, the board is at an increased risk of renewing the license of an unqualified pilot.

In addition, in October 2010, the board amended its contract with the institution providing manned, scale-model shiphandling courses to pilots to require a written evaluation of the pilots' performance. Since that time, two of the six pilots whose license renewals we reviewed attended the required manned model training. Although the executive director ultimately provided copies of these pilots' evaluations, they were not maintained in the pilots' files or immediately accessible upon our request. According to the executive director, board staff review the evaluations and provide them to pilots, but there is no current policy for board staff to retain the evaluations in pilots' files. Although we did not find any issues of inappropriate licensure, by not retaining copies of the evaluations in pilots' files, the board lacks assurance as to whether pilots successfully completed the required training programs.

Also, board staff do not use a checklist specifically created to process applications for original pilot licenses. In some cases, we noted that board staff have modified the renewal checklist to assist in processing applications for original licenses. We noted that four of the seven pilot files for original licenses issued during fiscal years 2011–12 and 2012–13 contained these modified checklists, while the remaining three included no licensure checklist at all. However, the renewal checklist is not sufficient for this purpose because it does not include all of the requirements for an applicant to qualify for an original license. Specifically, the renewal checklist does not include the requirement that the applicant must have successfully completed the pilot trainee training program before the board can issue the pilot an original license.

According to the executive director, the board did not create a separate checklist for processing original licenses because the executive director recites whether pilots have met the original licensing requirements at board meetings, which accomplishes the same purpose as a checklist. However, without sufficient documentation and processes in place, the board risks improperly issuing an original pilot license to an applicant who does not meet the requirements for licensure. The executive director explained that the board intends to create and use a checklist that includes all of the requirements when it processes applications for original licenses, and it intends to modify its renewal checklist to include verification that the pilot did not have a one-year break in piloting a vessel.

The Board Has Yet to Contract With Physicians to Perform Required Physical Examinations of Pilots

In our November 2009 report, we found that the board did not have written contracts with the physicians it had appointed and paid to conduct physical examinations of pilots. According to state law, the board is required to appoint physicians who are qualified to determine whether a pilot or trainee is fit to perform his or her duties before the board issues an original pilot license

or renews an existing license. We concluded that written contracts between the board and its appointed physicians would outline the duties of the physicians under contract and ensure consistency in pilot physical examinations. Further, we found that the board made payments to one medical clinic without a contract, totaling more than \$14,000 and \$26,000 in fiscal years 2007–08 and 2008–09, respectively. Contracts of \$5,000 or more are generally subject to competitive bidding under state law.¹ Therefore, to ensure that its expenditures are appropriate, we recommended that the board competitively bid contracts with physicians who perform pilot physical examinations.

According to the executive director, the board still does not have written contracts with board-appointed physicians. Further, the board lacks a formal process for monitoring physician performance, which written contracts could provide. According to the executive director, the board has not entered into contracts with physicians because it was in the process of promulgating regulations that include requirements that are stricter than current law. The Office of Administrative Law approved the new regulations relating to medical examinations in January 2014, and they will become effective on April 1, 2014.

Although our original recommendation called for the board to competitively bid contracts with physicians who perform pilot physical examinations, the executive director indicated that the board may take another approach. Specifically, the executive director explained that the board is considering entering into an interagency agreement with a single state-operated medical clinic, such as a state university, in lieu of competitively bidding and contracting with individual physicians. He indicated that the board has started the process of identifying a provider and writing the contract, and they are currently in negotiations with the University of California, San Francisco as a potential provider. However, the executive director told us that if an appropriate state-operated medical clinic—such as one that meets the requirements in regulations, which include having at least five to 10 years of experience in general occupational medicine or maritime occupational medicine—cannot be identified, then the board will likely have to competitively bid for contracts with a medical clinic.

Given that it has been more than four years since we made this recommendation, we question why it has taken the board so long to implement it. In our November 2009 report, the former president of the board stated that, as of October 2009, the board was defining criteria for the approval of physicians and for use in the contracting process in the future. The executive director explained that since that time, the board engaged in several activities that moved it towards implementing our recommendation, such as contracting with the University of California, San Francisco to conduct a pilot fitness study and holding numerous meetings to review and revise draft regulations. However, the board did not issue the notice of proposed rule making until July 2013—nearly four years after the board had reportedly begun defining criteria for physician approval. By delaying contracting with and monitoring board-appointed physicians, the board continues to lack assurance that its expenditures are appropriate and that board-appointed physicians are appropriately determining pilot fitness in accordance with state laws and regulations.

¹ The California Public Contract Code requires agencies to secure competitive bids before entering into consulting service contracts equal to or greater than \$5,000, with some exceptions. Agencies may not split contracts to avoid the \$5,000 threshold.

Conclusion

This review focused on relevant actions the board has taken related to selected recommendations we made in our November 2009 report. During our current review, we determined that the board fully implemented some of those 2009 recommendations. However, in several of the areas discussed in this letter report, we noted conditions that indicate a need for additional efforts by the board. We believe that by fully implementing the recommendations from our prior report and fully implementing the additional recommendations we present in this letter report, the board will more effectively meet its mission.

Recommendations

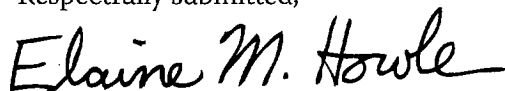
To ensure that its expenditures are appropriate, the board should do the following:

- Develop and implement a policy that requires the Bar Pilots to submit documentation demonstrating that they booked the most economical refundable airfare and made travel arrangements in the best interest of the State before the board reimburses travel costs. To the extent that the Bar Pilots cannot demonstrate that they booked the most economical refundable fare, the board should reimburse the Bar Pilots only the equivalent of the most economical fare.
- Develop and implement a process for reviewing travel reimbursement invoices, such as requiring the Bar Pilots to submit original receipts and disallowing individual costs for extended travel that exceed the costs for required travel.

To ensure that it consistently adheres to requirements in state law when licensing pilots, the board should do the following:

- Revise its checklist for processing license renewals to include all requirements specified in state law, including evidence that pilots piloted vessels in the past year, and retain copies of pilots' continuing education training evaluations.
- Develop and use a checklist for issuing original licenses that includes all requirements specified in state law.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor



Edmund G. Brown Jr.
Governor

Brian P. Kelly
Secretary

915 Capitol Mall, Suite 350B
Sacramento, CA 95814
916-323-5400
www.calsta.ca.gov

February 21, 2014

Elaine M. Howle, California State Auditor*
California State Auditor's Office
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Attached please find a response from the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Board) to your draft letter report (#2013-501) on your follow-up review of recommendations your office made to the Board in a 2009 audit. Thank you for allowing the Board and the California State Transportation Agency (Agency) the opportunity to respond to the report.

As noted in its response, the Board concurs with, and already has implemented corrective action that addresses, each of the four recommendations in the report. We appreciate your identification of opportunities for improvement and your recommendations for best practices that the Board can follow.

If you need additional information regarding the Board's response, please do not hesitate to contact Michael Tritz, Agency Deputy Secretary for Audits and Performance Improvement, at (916) 324-7517.

Sincerely,

(Original signed by: Brian P. Kelly)

BRIAN P. KELLY
Secretary

Attachment

cc: RADM Francis X. Johnston, President, Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
Allen Garfinkle, Executive Director, Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

California Transportation Commission • Board of Pilot Commissioners • California Highway Patrol • Department of Motor Vehicles
Department of Transportation • High Speed Rail Authority • Office of Traffic Safety • New Motor Vehicle Board

* California State Auditor's comments appear on page 14.

State of California

Edmund G. Brown Jr., Governor

**Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo, and Suisun**

660 Davis Street, San Francisco, CA 94111
Phone: (415) 397-2253 Fax: (415) 397-9463
bopec@ca.gov



February 19, 2014

Mr. Brian P. Kelly, Secretary
California State Transportation Agency
915 Capitol Mall Suite 350 B
Sacramento, CA 95814

Dear Secretary Kelly:

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (Board or board) thanks the California State Auditor (state auditor) for the opportunity to respond to the state auditor letter report dated February 14, 2014, resulting from a follow-up review to the *Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun: It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies with Legal Requirements* (Report 2009-501, November 2009). The Board appreciates the state auditor team's professionalism in carrying out its responsibilities, presenting its findings, and providing thoughtful recommendations. As detailed below, we agree with all the recommendations, and in all cases, have already taken steps to implement changes consistent with those recommendations.

The state auditor's recommendations and the Board's responses (in bold) are as shown below.

To ensure that its expenditures are appropriate, the board should do the following:

Recommendation No. 1

Develop and implement a policy that requires the Bar Pilots to submit documentation demonstrating that they booked the most economical refundable airfare and made travel arrangements in the best interest of the State before the board reimburses travel costs. To the extent that the Bar Pilots cannot demonstrate that they booked the most economical refundable fare, the board should reimburse the Bar Pilots only the equivalent of the economical fare.

Response:

The Board agrees with this recommendation.

The Board has revised its interpretation of "most economical refundable fare" airline ticket fare requirements contained in its contract with the San Francisco Bar Pilots to mean an airline ticket purchased at the economy fare basis that is refundable subject to a small cancellation fee. Prior to this contract language interpretation, the San Francisco Bar Pilots purchased and requested reimbursement for airfare that was purchased at the most economical fully refundable airfare, and therefore was in compliance with the contract as then interpreted by the Board. However, to ensure contemporaneous compliance with this new contract language interpretation, the Board has proactively instructed the San Francisco Bar Pilots to re-ticket any traveler that was scheduled to attend

training in May or June of 2014 for whom a ticket was purchased as of January 31, 2014 (and not previously modified by the traveler prior to that date), to a refundable fare with a small cancellation fee. The San Francisco Bar Pilots have completed the re-ticketing process. All subsequent airline tickets purchased under the contract will be consistent with this new fare basis interpretation.

Corrective action complete; no further action required.

Recommendation No. 2

Develop and implement a process of reviewing travel reimbursement invoices, such as requiring the Bar Pilots to submit original receipts and disallowing individual costs for extended travel that exceeds the cost for the required travel.

Response:

The Board agrees with this recommendation.

The Executive Director has instituted written invoice processing procedures to ensure that duplicate payment of travel costs does not occur, and to disallow travel costs that exceed the cost for the required travel. The new procedures require original invoices, when available, and ensure a thorough review of travel itineraries and invoice costs. (See enclosed.)

Corrective action complete; no further action required.

To ensure that it consistently adheres to requirements in state law when licensing pilots, the board should do the following:

Recommendation No. 3

Revise its checklist for processing license renewals to include all requirements specified in state law, including evidence that pilots piloted vessels in the past year, and retain copies of pilots' continuing education training evaluations.

Response:

The Board agrees with this recommendation.

The Board has amended its pilot license renewal checklist to include confirmation that the pilot has actively piloted a ship in the past year, and to include documentation the pilot has completed the periodic mandatory training within the past five years. (See enclosed.)

Corrective action complete; no further action required.

Recommendation No. 4

Develop and use a checklist for issuing original licenses that include all requirements specified in state law.

Response:

The Board agrees with this recommendation.

The Board has developed an original pilot license issuance checklist that includes confirmation of the satisfaction of all initial license requirements as required by state law. (See enclosed.)

Corrective action complete; no further action required.

In closing, there are two instances where the Board wishes to offer a clarifying response to the state auditor's perspective, as follows:

- **The last two sentences in the section entitled "The Board is Still Not Fully Complying With State Law Regarding Investigations."** These two sentences strongly suggest, without providing supporting facts, that delay in the completion of investigations could harm "pilots and crews, the shipping industry, or the environment." The Board has granted extensions of the 90-day period to receive investigation reports by the Incident Review Committee on various grounds, primarily for two reasons: (1) difficulty, often due to reasons beyond the Incident Review Committee's control, with the availability of documentary or testimonial evidence necessary to complete the Committee's investigation, and (2) the Executive Director's heavy workload, which only recently was lightened by the appointment of an Assistant Director, raising to four the number of staff at the Board. The Board's view is that allowing submission of investigation reports beyond the initial 90 days is preferable to submitting reports following an incomplete investigation or one that has been hastily concluded and documented. For the protection of both the public and the pilots, high-quality investigations and reports are indispensable. Absent those, pilots who merit disciplinary action may go undisciplined because a truncated investigation did not provide the necessary proof in support of disciplinary action against a pilot's license. Conversely, pilots can be exonerated of any negligence or misconduct by a full investigation of an incident, whereas an incomplete investigation and conclusions based on limited information could suggest pilot culpability where none exists. Finally, if there is a perceived threat to public safety, the Board has the authority to immediately take pilots off the water pending completion of an investigation. The Board used such authority most recently in connection with the January 2013 allision of the OVERSEAS REYMAR with fendering surrounding one of the towers of the Bay Bridge. ①
- **The last paragraph in the section entitled "The Board Has Yet to Contract With Physicians to Perform Required Physical Examinations of Pilots."** The report's concern with the delay in putting Board physicians under contracts that require a particular medical background, and that specify and standardize the medical criteria for assessing pilot fitness, is understandable. The Board is concerned, however, with the report's statement that "the board did not issue the notice of proposed rulemaking [concerning new fitness regulations] until July 2013—nearly four years after the board had reportedly [begun] defining criteria for physician approval." That statement could be construed to suggest that the Board was not diligent in fashioning a new system for ②

assessment of pilot fitness by Board-appointed physicians. The Board wishes to provide a clearer context to what the report briefly refers to as the “several activities” that the Board engaged in that moved it toward compliance with this recommendation. The Board’s redefinition of the qualifications of Board physicians and the standards they were to apply in assessing pilot fitness were part of a much larger regulatory effort that completely revised the existing pilot fitness-determination regime, and resulted in 28 pages of new and revised regulations. Specifically, as part of this regulatory effort, the Board contracted with the University of California, San Francisco (UCSF) for preparation of a report and recommendations on determining pilot fitness. That report took 17 months to complete. Immediately after submission of the UCSF report, a joint committee of the Board undertook the drafting of regulations to implement the recommendations in the report. The joint committee spent 20 months over the course of approximately 30 public meetings in drafting the regulations. While not an excuse for the delay in putting Board physicians under contract, this information provides a fuller picture of the Board’s efforts to revise its pilot fitness-determination procedures.

We appreciate the opportunity to provide a response on our plans to implement the state auditor’s recommendation. If you have questions or concerns, please contact me at 415-397-2253.

Sincerely,

(Original signed by: Allen Garfinkel)

Allen Garfinkle
Executive Director

Enc.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN

To provide clarity and perspective, we are commenting on the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun's (board) response to our audit. The numbers below correspond to the numbers we have placed in the margin of the board's response.

- ① We are puzzled by the board's suggestion that we have not provided supporting facts for our conclusion. As we explain on page 4, the board has a responsibility to close its investigations timely and we found that it did not close 18 out of 23 investigations we reviewed before the 90-day deadline. Further, for 13 investigations for which the incident review committee requested multiple extensions, it took between 31 and 192 days after the 90-day deadline to close the investigations. As the board acknowledges, for the protection of the public and the pilots, high quality investigations and reports are indispensable. As such, completing investigations in a timely manner would assist the board in reassuring the public that it is indeed working diligently to ensure protection against incidents that might cause harm. Thus, we stand by our conclusion on page 5 that although state law permits the board to approve extensions beyond the 90-day deadline, by repeatedly granting the committee's extension requests, the board gives the appearance that it may not be ensuring the best possible protection against incidents that could harm pilots and crews, the shipping industry, or the environment, as pilots are generally allowed to pilot while under investigation.
- ② We disagree with the board's suggestion that we did not provide the appropriate context regarding the activities it undertook in fashioning a new system for pilot fitness by board-appointed physicians prior to publishing the notice of proposed rule making in July 2013. Essentially, the board explains in greater detail the activities we already mention in our report. Specifically, on page 7, we explain that the board contracted with the University of California, San Francisco to conduct the pilot fitness study and that the board held numerous meetings to draft regulations that the board needed in order to contract with physicians. However, as the board acknowledges in its response, these activities do not excuse the delay. After more than four years, the board still has not implemented our prior recommendation.

cc: Members of the Legislature
 Office of the Lieutenant Governor
 Little Hoover Commission
 Department of Finance
 Attorney General
 State Controller
 State Treasurer
 Legislative Analyst
 Senate Office of Research
 California Research Bureau
 Capitol Press